

Paper No. 10  
JQ

THIS DISPOSITION IS NOT CITABLE AS  
PRECEDENT OF THE TTAB                      JULY 23, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Simplicity Burial & Cremation, Inc.**

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Serial No. 75/132,926

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Gerald Altman of Morse & Altman for applicant.

Andrew S. Ehard, Trademark Examining Attorney, Law Office  
101 (Jerry L. Price, Managing Attorney).

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Before Seeherman, **Hanak** and Quinn, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by Simplicity Burial &  
Cremation, Inc. to register the mark shown below

for "funeral services, namely embalming, burial, cremation and memorial services, and planning, coordinating and administering services therefor."<sup>1</sup>

The Trademark Examining Attorney has refused registration under Section 2(d) of the Act on the ground that applicant's mark, when used in connection with applicant's services, so resembles the previously registered mark SIMPLICITY for "funeral and cremation services"<sup>2</sup> as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between

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<sup>1</sup> Application Serial No. 75/132,926, filed July 11, 1996, alleging dates of first use of January 1995. The words "Burial & Cremation Services" are disclaimed apart from the mark. The application also contains the following statement: "The design element of the mark comprises the letter 's' superimposed over a headstone featuring blotches and stippling to create a marble effect."

<sup>2</sup> Registration No. 1,333,799, issued April 30, 1985; combined Sections 8 and 15 affidavit filed.

the services. *Federated Food, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

In this case, the services are essentially identical.

Turning to a consideration of the marks, we note at the outset that if the services are identical, "the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

With respect to the marks, although they must be considered in their entirety, it is nevertheless the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." In *re National Data Corp.*, 753 F.3d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For example, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark...." *Id.* at 751.

Here, in the case of applicant's composite mark, the disclaimed words "Burial & Cremation Services" obviously

are generic for the type of services offered by applicant. And, although the letter "S" is prominently displayed in applicant's mark, we find that the word "SIMPLICITY" is the most dominant feature of applicant's mark. We find this because this word is more likely to be impressed upon a consumer's memory and to be used in calling for the services. See, e.g., *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987). The dominant feature of applicant's mark is identical to the entirety of the cited registered mark, and we conclude that applicant's and registrant's marks are similar, when considered in their entireties, in sound, appearance and meaning.

Contrary to applicant's argument, we do not find that the term "simplicity," when used in connection with funeral and cremation services, is highly descriptive such that the scope of protection accorded to registrant's mark would not extend to the use of applicant's mark for identical services.<sup>3</sup>

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<sup>3</sup> The record fails to support applicant's argument. In this connection, applicant attached, to its reply brief, computer printouts of listings of business names, all of which include, in part, the term "simplicity." This evidence, according to applicant, shows widespread use of the term.

Applicant, in its two-page response to the first Office action and in its three-page appeal brief, contended that the term was in widespread use. In its reply brief, applicant reiterated its contention, also asserting that "during the prosecution of the application herein, the applicant did submit extensive proof of this very fact in the form of documentation annexed hereto as

Decision: The refusal to register is affirmed.

E. J. Seeherman

E. W. Hanak

T. J. Quinn  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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Attachment A." Contrary to this assertion, however, the record file of the application is devoid of any such evidence prior to its submission with the reply brief. Moreover, both applicant's response and appeal brief are conspicuously silent regarding any accompanying evidence in support of its contention of widespread use.

Accordingly, applicant's evidence is untimely submitted, and has not been considered in making our decision. Trademark Rule 2.142(d). In any event, even if considered, the evidence would not be persuasive of a different result in this case.

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